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peal. Reversed and remanded for further proceedings in accordance with the opinion.

Hall, Woods & Cox, of Roanoke, for appellants.

Lucian H. Cocke and *Staples & Cocke*, all of Roanoke, for appellees.

VIRGINIAN RY. CO. *v.* ANDREWS.

Jan. 13, 1916.

[87 S. E. 577.]

1. Master and Servant (§ 278*)—Injuries to Servant—Liability of Master—Statutory Requirements—Evidence.—Evidence held to show that an hour before the injuries complained of, defendant had complied with every requirement of Boiler Act Feb. 17, 1911, c. 103, 36 Stat. 913 (Comp. St. 1913, §§ 8630-8639) and that the engine, boiler, and appurtenances which exploded, injuring plaintiff servant, measured up to the statutory standard.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 724.]

2. Master and Servant (§ 124*)—Injuries to Servant—Liability of Master—Statutory Regulation—Construction.—The Boiler Act, regulating the inspection and care of locomotive boilers, cannot receive the same interpretation as Employers' Liability Act April 22, 1908, c. 149, 35 Stat. 65 (Comp. St. 1913, §§ 8657-8665) and Safety Appliance Act, March 2, 1893, c. 196, 27 Stat. 531 (Comp. St. 1913, §§ 8605-8612), since the latter relate to appliances which work either automatically or are simple in construction, whereas, locomotive boilers require great care and supervision by the engineer; the two instrumentalities being so diverse as not to be subject to the same rules.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 235-242; Dec. Dig. § 124.* 9 Va.-W. Va. Enc. Dig. 724.]

3. Master and Servant (§ 265*)—Injuries to Servant—Liability of Master—Statutory Regulation.—Under the Boiler Act, when the railroad has turned over to the engineer a locomotive engine and boiler, and appurtenances in proper condition and safe to operate, its liability for injuries to him caused by the boiler ceases, since it is not an insurer of his safety throughout the run, so that, in an action for injuries received during the run, the plaintiff must show that the defendant was guilty of the negligence charged.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-908, 955; Dec. Dig. § 265.* 9 Va.-W. Va. Enc. Dig. 724.]

4. Witnesses (§ 37*)—Competency—Knowledge.—It was error to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

admit the testimony of a fireman that a crown sheet of a locomotive boiler was defective, when his only opportunity for observation was one trip, on which the plaintiff's intestate was killed, and where he had no knowledge of the construction of such type of boiler.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 80-87; Dec. Dig. § 37.* 5 Va.-W. Va. Enc. Dig. 781.]

5. Evidence (§ 555*)—Competency—Opinion Evidence—Inference.—The opinions of expert witnesses, not based on facts within their own knowledge or established by other evidence in the case, so that their conclusions were matters of speculation and of no evidential value, were erroneously admitted, since it violated the principle that an inference cannot be drawn from a presumption, and such evidence will not support a verdict.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2376; Dec. Dig. § 555.* 5 Va.-W. Va. Enc. Dig. 777.]

6. Evidence (§ 549*)—Expert Witnesses—Facts as Basis of Opinion.—Before the opinion of an expert witness, based on facts to which he has not himself testified, can be admitted, he must understand the facts proved, and his testimony must be in answer to a hypothetical question embodying the evidence.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2376; Dec. Dig. § 549.* 5 Va.-W. Va. Enc. 777.]

7. Master and Servant (§ 265*)—Injuries to Servant—Presumptions—Evidence.—Evidence, in a servant's action for injuries by the explosion of a locomotive boiler, held, insufficient to raise the presumption of defendant's negligence, so that the burden rested upon the plaintiff to show the negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-908, 955; Dec. Dig. § 265.* 9 Va.-W. Va. Enc. Dig. 72.]

8. Negligence (§ 98*)—Injuries to Servant—Comparative Negligence—Sole Cause of Injury.—In an action for the wrongful death of an engineer charged with the care of his locomotive and its boiler, the death being caused by an explosion of the boiler, if the engineer was negligent, no recovery at all could be had; the rule of the federal Employers' Liability Act being inapplicable to a case where the negligence of the plaintiff or deceased was the sole cause of the injury.

[Ed. Note.—For other cases, see Negligence; Cent. Dig. §§ 93, 165; Dec. Dig. § 98.* 10 Va.-W. Va. Enc. Dig. 377.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.